IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1089

WILLIE E. WILLIAMS,

Appellant,

vs.

ILLINOIS,

Appellee.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

BRIEF OF THE CITY OF CHICAGO AS AN AMICUS CURIAE URGING AFFIRMANCE.

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INTEREST OF THE AMICUS CURIAE.

The City of Chicago, Illinois, a municipal corporation, hereby respectfully presents, pursuant to Rule 42(4) of the Rules of this Court, its brief of an *amicus curiae*, supporting the position of the appellee.

Since this brief *amicus curiae* is being filed by a political subdivision of a State sponsored by the authorized law officer thereof, consent to its filing appears to be unnecessary. However, the consent of the attorneys for both the appellant and for the appellee has been obtained. These consents are being filed with this brief.

The interest of the City of Chicago and other municipalities in the subject of this case is very great, probably even greater than that of Illinois and the other state governments.* Determination of whether the device of requiring convicted offenders who refuse or cannot pay their fines to work off those fines in jail is constitutional or not will have prodigious effect on law enforcement in municipalities. The resolution of this issue will impinge directly on the standing problem of disciplining many thousands of ordinance violators each year, a substantial percentage of whom, for one reason or another, do not pay their fines.

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* Sections 51 and 52 of the Illinois Jails and Jailers Act (Ill. Rev. Stat. 1969, ch. 75, §§ 51, 52) provide that persons convicted of violations of ordinances of a municipality or other political subdivision of the state shall, upon nonpayment of a fine imposed therefor, be imprisoned until the fine is satisfied at the rate of $5 per day, with the qualification that no one shall be so imprisoned for a longer period than 6 months for any one offense.

This enactment exactly parallels Section 1-7 (k) of the Illinois Criminal Code (Ill. Rev. Stat. 1969, ch. 38, §§ 1-7(k), here attacked by appellant as unconstitutional.

ARGUMENT.

It is not the intention of the City of Chicago to advocate that different standards of justice should be imposed on the poor. But the fact of life is that unfortunately there are poor persons and that unfortunately poor persons do on occasion commit crimes. There are persons who cannot pay fines. There are also individuals who refuse to do so. Together they present a special problem, a very large problem, which the criminal law must attempt to cope with as best it can. Legislation is not unconstitutional because it recognizes and addresses itself to this difficult problem.

That rich persons can pay fines with ease has no relevance to devising a practical method of dealing with convicted defendants who for one reason or another do not pay fines. Appellant's argument falsifies and sentimentalizes the whole problem by its creation of a sharp dichotomy between rich and poor. Incomes in Illinois, as in the other states, cover a very broad range. The rich constitute only a comparatively small segment of the population, especially of the convicted criminal population. Most persons have to earn their bread by labor more or less onerous. The working class—blue and white collar—make up the majority. Most people cannot pay a substantial fine with ease.

A system which permitted the indigent to get off with their fines unpaid would discriminate against the great working majority who must pay their fines with their own hard-earned money. Even to the rich the imposition of a fine, by virtue of the stigma attached to it, may constitute a greater penalty than incarceration is for the anonymous, homeless destitute.

The sentence imposed on Williams was not meted out to him because he was indigent. It was inflicted upon him because he had committed a criminal offense, a theft. Once convicted, he has no constitutional right to receive for the same type of offense the same punishment that any other defendant, no matter what his economic status, receives. *United States ex rel. Privitera* v. *Kross,* 239 F. Supp. 118, at 120 (S. D. N. Y., 1965); aff'd, 2 Cir., 1965, 345 F. 2d 533; cert. den. 382 U. S. 911 (1965).

Equal protection of the laws guarantees an equal right to a fair trial to rich and poor (and those in between) alike. The right to a fair trial is a species of protection of the law. But punishment, though legal, is not protection. The principles by which fair trial is assured are not the same as those by which the punishment is made to fit the crime and the offender. *Griffin* v. *Illinois,* 351 U. S. 12 (1956), cited by appellant (Brief, pp. 24, 25, 26, 31), which held the due process clause of the Fourteenth Amendment violated by a state's denial of effective appellate review because of an indigent defendant's inability to pay for a transcript, is patently distinguishable. The right to full appellate review of a criminal conviction, though a statutory grant, is virtually an integral part of the right to a fair trial.

The prevailing modern philosophy of penology is that the punishment should fit the offender and not merely the crime. As this Court said in *Williams* v. *New York,* 337 U. S. 241, at 247, 248 (1949):

> "The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. . . . . This whole country has travelled far from the period in which the death sentence was an automatic and commonplace result of convictions—even for offenses today deemed trivial.

> Today's philosophy of individualizing sentences makes sharp distinctions for example between first and repeated offenders. Indeterminate sentences, the ultimate termination of which are sometimes decided by non-judicial agencies, have to a large extent taken the place of the old rigidly fixed punishments. The practice of probation which relies heavily on non-judicial implementation has been accepted as a wise policy. Execution of the United States parole system rests on the discretion of an administrative parole board."

The incarceration of persons who either refuse or are unable to pay fines is both a practice long established in this country and a practice endorsed by many contemporary experts. It was upheld by this Court as long ago as 1842 in *United States* v. *Murphy*, 41 U. S. (16 Pet.) 203. Its embodiment in Section 1-7(k) of the Illinois Criminal Code (Ill. Rev. Stat. 1969, ch. 38, § 1-7(k)) was drafted as recently as 1961 by the Joint Committee of the Illinois State and Chicago Bar Associations to Revise the Illinois Criminal Code, a committee composed of judges, lawyers and law professors experienced in criminal law. The opinion of the Illinois Supreme Court in the case at bar notes (42 Ill. 2d at 516) that the report of this committee (Committee Comments, Smith-Hurd Illinois Anno. Stat., ch. 38, § 1-7, p. 31) stated:

> "No provision is made for discharge on a pauper's oath since it is considered that on any conviction for a criminal offense the intent present is equivalent to the malice requirement in civil cases, in which discharge prior to the six months limit may be obtained only upon payment of the judgment."

That there may be differences of opinion as to the preferable method of enforcing payment of unpaid fines, taking into consideration the various elements of fairness and realistic practicality, does not make the Illinois statutory design unconstitutional.

It is, we repeat, a difficult problem. As the Task Force Report on the Courts of the President's Commission on Law Enforcement and Administration of the Courts (1967) states (at p. 18):

> "Putting all offenders in jail is a wholly unacceptable alternative, as is relieving those unable to pay a fine of all penalties."

The proposal of the appellant that the state use a system of installment arrangements or execution (Appellant's Brief, p. 21) is largely unrealistic. Execution and levy are worthless in dealing with indigents and non-indigents with meager resources and are in large measure ineffectual in coping with any dishonest debtor. A system of collection in installments might be successful in many instances. Reports of such systems working well in Sweden and Great Britain (Appellant's Brief, p. 20) are encouraging. But, as is well known, law enforcement and observance in those countries are quite different from what they are in this and police and criminal law measures are not readily transferable from there to here. It is a matter requiring investigation, for which a legislative committee is the apt instrument. Whether the installment method should be used is for the legislative discretion. The United States Constitution does not require it.

The New York statute—enacted in response to *People* v. *Saffore*, 18 N. Y. 2d 101, 218 N. E. 2d 686 (1966)—which permits a defendant unable to pay a fine imposed by the court to apply to the court for resentence and provides that, upon resentence, the court, if satisfied that the defendant is unable to pay the fine, is prohibited from imposing any fine in excess of the amount the defendant is able to pay, but may otherwise decree any sentence it originally could have prescribed, is another permissible alternative solution to the problem. Whatever the obvious merits of the

New York system, it seems calculated to result on the whole in more and longer jail sentences. It appears to be a new device and there is nothing in the record indicating that any authoritative study of its operation is yet available. So far the Illinois legislature has not seen fit to adopt it and the United States Constitution does not require that it be adopted.

The appellant in his brief has completely overlooked Sections 35-41 of the Illinois Jails and Jailers Act (Ill. Rev. Stat. 1969, ch. 75, §§ 35-41). This is entitled *Employment of Persons Committed* and was enacted in 1967, effective January 1, 1969. Section 35 thereof provides:

> "*35. Work release order.*] § 1. In the case of any person committed to the county jail, house of correction or workhouse, for any crime or for non-support of any member of his family, or for non-payment of a fine, or for contempt of court, the court may, in its order of commitment provide that such person may leave the county jail, house of correction or workhouse during necessary and reasonable hours for any of the following purposes:
>
> "(a) Seeking employment;
>
> "(b) Working at his employment;
>
> "(c) Conducting his own business or other self-employed occupation including, in the case of a woman, housekeeping and attending the need of her family;
>
> "(d) Attendance at an educational institution, or
>
> "(e) Medical treatment,
>
> "Unless such work release order is expressly granted by the court, the prisoner is expressly sentenced to ordinary confinement. The prisoner may petition the court for such work release at the time of sentence or thereafter, and in the discretion of the court may renew his petition. The court may revoke the work release order at any time with or without notice."

Section 36 of the Act empowers the court to order the sheriff or the superintendent of a house of correction to make every reasonable effort to secure some suitable employment for a prisoner. It further specifies that any prisoner for whom such employment is procured shall not be required to work more than 8 hours per day or 48 hours per week.

Under Section 37 the clerk of the circuit court is charged with the duty of collecting the earnings of prisoners and charging against each prisoner's earnings the cost of his board (not to exceed $3.50 per day), travel expenses to and from work and support of the prisoner's dependents (if any). The balance is to be paid to the prisoner on his discharge.

Individual records are required to be kept of each prisoner's account by the clerk, under Section 40. The moneys are to be deposited in a trust account designated by the county board. The accounts are subject to audit in the same manner as accounts of the county.

Section 41 of the same act provides that the committing court retains jurisdiction during the term of commitment and may order a diminution of the sentence if the conduct of the prisoner merits such diminution.

It is submitted that the Illinois statutory plan providing for the employment of prisoners is the best solution that has been devised for the problem created by indigents unable to pay fines.

There is no indication in the Appellant's Brief that he has made any effort to seek relief under this statute. Although his fine of $500 remains unsatisfied, with the exception of a credit of $25 he has apparently accumulated by imprisonment for five days elapsing between completion of his jail sentence of one year and his release on bail pending appeal (A. 31, 35), Williams has not petitioned

the Circuit Court for an order under the statute which has now been in effect 15 months. Williams has not given the Illinois system a fair chance.

CONCLUSION.

The constitutionality of the Illinois statute requiring criminal offenders who do not, for whatever reason, pay their fines, to work off their fines in jail, should be upheld.

The judgment of the Illinois Supreme Court should be affirmed.

Respectfully submitted,

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